

REMARKS

A. Background

Claims 1 and 3-22 were pending in the application at the time of the Office Action. Claim 22 was withdrawn from consideration by the Examiner. Claims 6, 16, and 21 were rejected as failing to comply with the written description requirement. Claims 1 and 3-21 were rejected as being obvious over cited art. By this response applicant has cancelled claim 6 and amended claims 1, 16, 17, 21, and 22. As such, claims 1, 3-5, and 7-21 are presented for the Examiner's consideration in light of the following remarks.

B. Proposed Amendments

Applicant has herein amended the specification to address formal matters. Applicant has herein amended claims 1, 16, 17, 21, and 22 to further clarify, more clearly define, and/or broaden the claimed inventions to expedite receiving a notice of allowance. For example, independent claims 1, 17, and 22 have been amended to clarify that the flow of air or gas into the main chamber and the flow of sterilant vapor out of the main chamber pass through the same filter. This amendment to the claims is in the application at least by Figures 1 and 5 and the corresponding discussion in the specification. Other clarifying amendments have also been set forth herein to remedy formal matters. In view of the foregoing discussion, applicant submits that the amendments to the specification and claims do not introduce new matter and entry thereof is respectfully requested.

C. Examiner Interview

Applicant would like to thank the Examiner for the courtesy of the telephone interview conducted on June 24, 2009 between the undersigned and the Examiner of record in the current application. A proposed amendment to claim 1 was discussed and the claimed enclosure and system were contrasted with the primary *Drinkwater* reference, as substantially presented below. The Examiner agreed that the amended claim appears to overcome the *Drinkwater* reference, but stated that he would need to further study the secondary references to determine if the amended claim overcomes those references. As such, no formal agreement was reached during the interview. The proposed amendment is herein included in independent claim 1. Applicant notes that independent claims 17 and 22 have also been amended to generally include the proposed amendment.

D. Rejections based on 35 U.S.C. 112

Paragraphs 3-5 of the Office Action reject claims 6, 16 and 21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Inasmuch as claim 6 has been canceled herein, the rejection of that claim has been rendered moot and should be withdrawn. Regarding claims 16 and 21, in view of amendments made herein to those claims, Applicant submits that the rejection has been overcome and should be withdrawn.

E. Rejections based on 35 U.S.C. 103

1. Rejection based on Drinkwater/Hunter/Adams combination

Paragraphs 6 and 7 of the Office Action reject claims 1, 3, 4, 6, 7, 10, 11 and 13-21 under 35 U.S.C. § 103(a) as being obvious over PCT Publication No. WO 01/11774 to Drinkwater

(“*Drinkwater*”) in view of U.S. Patent No. 6,368,206 to Hunter et al. (“*Hunter*”) and PCT Publication No. WO 03/082355 to Adams (“*Adams*”). Inasmuch as claim 6 has been canceled herein, the rejection of that claim has been rendered moot and should be withdrawn. Regarding the rest of the rejected claims, Applicant respectfully traverses this rejection and submits that a prima facie case of obviousness has not been established at least because the allegedly obvious combination would not include all of the limitations recited in the rejected claims. Of the rejected claims, claims 1 and 17 are independent claims.

Drinkwater is directed to a method of sterilizing an enclosure. See Abstract. More specifically, *Drinkwater* is directed to a method for the rapid removal of the sterilizing gas from the enclosure. See p.1, lines 3-4. *Drinkwater* discloses that a key aspect of the method is “to make use of the very high airflow rates possible within the isolator.” To provide the high airflow rates, *Drinkwater* discloses a closed-loop system in which sterilant vapor is introduced into the isolator 10 (which the Office Action equates to the claimed “enclosure”) through an inlet filter 11 and exits the enclosure 10 through a separate exhaust filter 12, as shown in Figure 1. To facilitate the rapid removal of sterilant, the filters 11 and 12 are positioned on opposite faces of the enclosure 10 so as to produce a laminar or near-laminar flow. See p. 2, lines 20-26; p. 3, lines 24-32. *Drinkwater* discloses that the inlet filter 11 and the exhaust filter 12 are typically disposed, respectively, on the top and bottom (base) of the enclosure 10. See p. 3, lines 25-32. *Drinkwater* discloses that the exhaust filter 12 can alternatively be disposed on a face other than the base, but close to the base. See p. 3, line 35 to p. 4, line 1. However, Applicant notes that nowhere in *Drinkwater* does it disclose the exhaust filter and the inlet filter being disposed on the same face, or being the same filter. As such, Applicant submits that *Drinkwater* does not disclose or suggest an enclosure having a main chamber and a plenum chamber separated by a

filter, in which a filtered flow of air or gas flows into the main chamber and a flow of sterilant vapor flows out of the main chamber, “wherein the flow of air [or gases] into the main chamber and the flow of sterilant vapour out of the main chamber pass through the same filter,” as recited in amended claims 1 and 17.

Applicant further submits that it would not have been obvious to modify *Drinkwater* to incorporate the aforementioned limitation. As noted above, one of the main purposes of *Drinkwater* is to rapidly remove sterilant gas from the enclosure, and a key aspect for fulfilling this purpose is to provide a laminar or near laminar flow of the gas through the enclosure 10 by positioning the filters 11 and 12 on opposite sides of the enclosure 10. However, if the *Drinkwater* apparatus were modified such that the air or gas flow into and out of the enclosure 10 were to take place through the same filter, a laminar flow would not occur. In fact, a very turbulent flow would result, one which is exactly opposite from a laminar flow. As such, the modification would render *Drinkwater* unsatisfactory for its intended purpose. That is, *Drinkwater* would no longer be able to “rapidly” remove sterilant gas from the enclosure because a key aspect of *Drinkwater* (i.e., the laminar flow) would be missing.

Hunter discloses a biological safety cabinet 10 having a protected work area or chamber 44 and a blower 28 that circulates an airflow through the chamber 44 to provide a negative pressure area therein. See abstract. As shown in Figure 4, cabinet 10 also includes a plenum box 33 attached to the outlet of the blower 28 and two filters (supply filter 32 and exhaust filter 30) fluidly attached to the plenum box 33. *Hunter* discloses that “plenum box 33 ... provides a structure for evenly distributing the air flow to both the supply and exhaust filters.” Col. 10, lines 3-6. To facilitate the even distribution, a baffle 88 is disposed within plenum box 33 that tapers upwardly from the blower 28. As discussed at col. 9, line 62 through col. 10, line 40,

during use the baffle 88 causes a portion of the air that exits the blower to flow up through the exhaust filter 30 while the rest of the air exiting the blower 28 passes down through the supply filter 32 and into the chamber 44. The air that passes into chamber 44 through supply filter 32 is then recirculated to the input of the blower 28 by passing beneath and behind the chamber 44, away from the supply filter 32. See Figure 3 and col. 7, lines 10-32. As such, *Hunter* only discloses air passing one way through supply filter 32, in the direction from the plenum box 33 into the chamber 44; air passing out of the cabinet 10 through exhaust filter 30 first passes through blower 28.

Because *Hunter* only discloses air passing in one direction through supply filter 32, Applicant submits that *Hunter* does not cure the deficiencies of *Drinkwater*, discussed above. That is, *Hunter* also does not disclose or suggest “wherein the flow of air [or gases] into the main chamber and the flow of sterilant vapour out of the main chamber pass through the same filter,” as recited in amended claims 1 and 17.

Adams discloses a method and apparatus for decontaminating an enclosed space and is merely cited for allegedly disclosing that the apparatus that delivers the sterilant vapor is disclosed within the apparatus. As such, *Adams* also does not cure the deficiencies of *Drinkwater*, discussed above.

In light of the above, Applicant respectfully submits that a *prima facie* case of obviousness has not been established regarding independent claims 1 and 17 at least because i) the cited references, taken together or individually, fail to disclose all of the limitations of claims 1 and 17, and ii) the allegedly obvious modification of *Drinkwater* would render *Drinkwater* unsatisfactory for its intended purpose. Accordingly, Applicant respectfully requests that the obviousness rejection with respect to claims 1 and 17 be withdrawn.

Claims 3, 4, 7, 10, 11, 13-16, and 18-21 variously depend from claims 1 and 17 and thus incorporate the limitations thereof. As such, applicant submits that claims 3, 4, 7, 10, 11, 13-16, and 18-21 are distinguished over the cited art for at least the same reasons as discussed above with regard to claims 1 and 17. Accordingly, Applicant respectfully requests that the obviousness rejection with respect to claims 3, 4, 7, 10, 11, 13-16, and 18-21 also be withdrawn.

2. Rejections based on further cited art

Paragraphs 8 and 9 of the Office Action reject claims 5, 8, 9, and 12 under 35 U.S.C. § 103(a) as being obvious over the *Drinkwater/Hunter/Adams* combination, discussed above, and further in view of various other cited references. Specifically, claims 5 and 12 are rejected in view of U.S. Patent No. 4,601,885 to McClure (“*McClure*”) and claims 8 and 9 are rejected in view of U.S. Publication No. 2002/0168305 to Morrow et al (“*Morrow*”). *McClure* is merely cited for allegedly teaching an apparatus having different sized outlets and *Morrow* is merely cited for allegedly teaching an apparatus positioned within the chamber that converts sterilant into harmless byproducts.

Inasmuch as the rejections of claims 5, 8, 9, and 12 depend on the allegedly obvious combination of *Drinkwater*, *Hunter*, and *Adams*, Applicant submits that claims 5, 8, 9, and 12 are distinguished over the cited art for at least the same reasons as discussed above. Furthermore, claims 5, 8, 9, and 12 depend from claim 1 and thus incorporate the limitations thereof. In light of the above, applicant submits that claims 5, 8, 9, and 12 are distinguished over the cited art for at least the same reasons as discussed above with regard to claim 1. Accordingly, Applicant respectfully requests that the obviousness rejection with respect to claims 5, 8, 9, and 12 also be withdrawn.

No other objections or rejections are set forth in the Office Action.

D. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, Applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, Applicant respectfully requests the Examiner's reconsideration and allowance of claims 1 and 3-21 as amended and presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 C.F.R. § 1.16; (2) any patent application and reexamination processing fees under 37 C.F.R. § 1.17; and/or (3) any post issuance fees under 37 C.F.R. § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

Dated this 30th day of July 2009.

Respectfully submitted,

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